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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

No. 548

ALBERT J. BARTA, JOHN E. BARTA and CHARLES K. FAILING, *Petitioners,*

v.

OGLALA SIOUX TRIBE OF THE PINE RIDGE RESERVATION OF SOUTH DAKOTA, and JAMES IRON CLOUD, *Respondents.*

CLAIRE COOMES and A. R. DAVIES, *Petitioners,*

v.

OGLALA SIOUX TRIBE OF THE PINE RIDGE RESERVATION OF SOUTH DAKOTA, and JAMES IRON CLOUD, *Respondents.*

JOHN GLOVER and MERTON GLOVER, *Petitioners,*

v.

UNITED STATES OF AMERICA, *Respondent.*

JACK LEWIS and MARVIN SPRACKLIN, *Petitioners,*

v.

UNITED STATES OF AMERICA, *Respondent.*

CYRUS PORCH and WILLIAM PORCH, *Petitioners,*

v.

UNITED STATES OF AMERICA, *Respondent.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit**

## BRIEF FOR RESPONDENTS OGLALA SIOUX TRIBE AND JAMES IRON CLOUD IN OPPOSITION

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## BRIEF FOR RESPONDENTS OGLALA SIOUX TRIBE AND JAMES IRON CLOUD IN OPPOSITION

The respondents Oglala Sioux Tribe and James Iron Cloud oppose the grant of the petition for a writ of certiorari in this case since the decision below is clearly

correct, presents no novel or important question of federal law, and involves no conflict of decisions.

## OPINIONS BELOW

The opinion of the Court of Appeals has now been reported at 259 F. 2d 533.

Petitioners failed to refer to and to append to their petition the opinion of the District Court, as required by Rule 23(1)(a). That opinion was reported at 146 F. Supp. 917.

## QUESTIONS PRESENTED

Petitioners have presented five questions, only the first two of which relate to the suits brought by respondents Oglala Sioux Tribe and James Iron Cloud. The first of these raises the question of the correctness of the dismissal of the appeals on the ground that they were filed late. The second question concerns the jurisdiction of the District Court over the cases brought by the Oglala Sioux Tribe. That question was not reached by the Court of Appeals. Question 2 would, therefore, be reached only if this Court grants the writ of certiorari as to Question 1 and reverses the Court of Appeals on that question. If the Court were to do that, precedent would dictate that the cases be returned to the Court of Appeals for further consideration.

The only presently relevant question as to the respondents Oglala Sioux Tribe and James Iron Cloud is, therefore, whether the Court of Appeals properly dismissed petitioners' appeals as out of time.

## STATEMENT OF THE CASE

Pursuant to the provisions of the Indian Reorganization Act, 48 Stat. 937; 25 U.S.C. § 476, the Oglala Sioux Tribe in 1935 organized a tribal government. That government functions under a tribal constitution, which has been approved by the Secretary of the Interior. Under the terms of the constitution, the Oglala Sioux Tribe discharges certain responsibilities of local government, including the maintenance of a tribal court, a tribal police force and a tribal jail.

The bulk of tribal services is financed out of tribal lease rental income. To supplement that income, however, the Tribe levies certain fees and license taxes. One such tax, which is used to support the tribal law and order system, is a license tax levied on non-members for the privilege of leasing trust land on the Pine Ridge Indian Reservation. This tax supplements the contributions of the tribal membership to the financial support of the tribal government.

Petitioners have been lessees of trust land on the Pine Ridge Indian Reservation. They entered into lease contracts knowing of the existence of the tax and, in fact, paid the tax until 1953. Beginning on November 1, 1953, they refused to pay the tax, asserting that it was invalid. After the validity of the tax was upheld in a test case, *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956), *affirming* 129 F. Supp. 15 (D.S.D. 1955), the Tribe brought suits against two lessees to collect delinquent taxes. Three other lessees, who owed less than the jurisdictional amount of $3,000, were sued by the United States on behalf of the Tribe, so as to bring all five suits in the Federal Court and permit disposition at a single trial.

The five suits were consolidated for trial and tried before a jury. They ended in directed verdicts for plaintiffs.

Petitioners filed timely motions for new trials. A hearing was had on these motions on October 10, 1957, at the conclusion of which the Court declared: "The motions will be denied." Immediately thereafter, on October 10, 1957, the Court ordered the entry of judgment in the cases brought by the Tribe. The docket entries for that day reflect the denial of the motions for a new trial and the entry of judgment. Twenty days later, on October 30, 1957, a formal order denying the motions for a new trial in the tribal cases was filed. The notices of appeal in all cases were filed on November 29, 1957.

The Court of Appeals dismissed the appeals in the tribal cases for lack of jurisdiction, holding that the time for appeal had begun to run on October 10, 1957, and that the notices of appeal filed on November 29, 1957 were thus filed late.

The Court of Appeals further affirmed the decisions of the District Court in the three cases brought by the United States.

## ARGUMENT

### A. THE TRIBAL CASES

#### 1. The Court of Appeals correctly applied the rule laid down by this Court in the Schaefer Brewing Co. case

As already indicated, the appeals in the tribal cases were dismissed on the ground that the notices of appeal were filed late, more than thirty days after October 10, 1957.

The judgments of the District Court, entered on October 10, were precise in stating the principal sum due as well as all interest and penalties. Respondents

have conceded that these judgments were final and, in their notices of appeal, have identified the judgments of October 10 as the judgments appealed from. Therefore the issue here is not whether the judgments signed and entered on October 10, 1957 were final judgments from which appeals might be taken within thirty days. The finality of the October 10 judgments is undisputed.

The only issue involved in this first portion of the petition is whether the formal orders denying the motions for a new trial, filed on October 30, 1957, extended the time for filing the appeals. The Court below held that the formal orders merely recapitulated the actions taken twenty days earlier and did not extend the time to appeal.

In *United States* v. *Schaefer Brewing Co.*, 356 U.S. 227 (1958), this Court clearly laid down the applicable rule. The rule is that the time for appeal starts running with some action of the District Court which is clearly its "final act in the case." 356 U.S. at 232. A subsequent, more formal order, which, under the Federal Rules of Civil Procedure, is not really necessary, does not extend the time to appeal. See 356 U.S. at 233.

In the instant case the District Court had disposed of all pending motions on October 10 and entries had been made to that effect. The Court had then signed the judgments, which specify both principal and interest. It was clearly its final act in the case. The subsequent formal order was unnecessary and did not cause the time for appeal to start running anew.[1]

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[1] A case on all fours with the instant one is *Mosier* v. *Federal Reserve Bank of New York*, 132 F. 2d 710 (2d Cir. 1942). See also *Agostino* v. *Ellamar Packing Co.*, 191 F. 2d 576 (9th Cir. 1951). *Cf. J. E. Haddock, Ltd.* v. *Pillsbury*, 155 F. 2d 820 (9th Cir.), cert. denied, 329 U.S. 716 (1946); *Woods* v. *Nicholas*, 163 F. 2d 615 (10th Cir. 1947).

Respondents cite *Partridge* v. *Presley*, 189 F.2d 645 (D.C. Cir.), *cert. denied*, 342 U.S. 850 (1951), to suggest a conflict of circuits. But the *Partridge* case is wholly in keeping with the decision below. In the *Partridge* case, as Judge Wilbur K. Miller pointed out, "nothing appears to indicate a hearing was had on the motion [for a new trial] prior to the judgment . . . nor even that the trial judge was then aware of the pendency of the motion for a new trial." 189 F.2d at 647. The crucial difference in the instant case is that the motions for a new trial were not only known to the Court but had been heard and denied when the October 10 judgments were entered.

There is thus no conflict of circuits concerning this matter. The *Schaefer Brewing* case, decided earlier this year, is clearly controlling and was followed by the Court below. No certiorari question has been presented.

### B. THE SUITS OF THE UNITED STATES

#### 1. The United States had an interest in these actions which authorized it to maintain the suits

When petitioners attack the suits brought by the United States on the ground that the court lacked jurisdiction, they do not mean what they say. As the suits were brought by the United States, jurisdiction was clearly obtained under the provisions of 28 U.S.C. § 1345. What petitioners really appear to argue is that the United States had no standing to bring these actions on behalf of the Oglala Sioux Tribe.

This question was fully discussed by Felix S. Cohen, whom this Court has recognized as "an acknowledged expert in Indian law,"[2] in his *Handbook of Federal Indian Law*, p. 367:

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[2] *Squire* v. *Capoeman*, 351 U.S. 1, 8-9 (1956).

"A pecuniary interest of the United States itself need not exist in cases involving restricted Indian lands or land in which the United States is trustee. It is well settled that the United States, by virtue of its peculiar relations with the Indians—often called 'guardianship'—or as trustee of their property, has the capacity and the duty to effectuate Government policies by protecting and enforcing their rights in property held by it as trustee, or by the Indians themselves in fee simple, subject to restrictions on alienation.

"The United States acts in behalf of itself and as trustee or guardian for the Indians. When proceeding on its own behalf the United States is (a) protecting its guardianship over the Indians, and (b) removing unlawful obstacles to the fulfillment of its obligations. In *United States* v. *Fitzgerald* [201 Fed. 295 (C.C.A. 8, 1912)] the Court said:

> " 'The United States may lawfully maintain suits in its own courts to prevent interference with the means it adopts to exercise its powers of government and to carry into effect its policies. It may maintain such suits, although it has no pecuniary interest in the subject-matter thereof, for the purpose of protecting and enforcing its governmental rights and to aid in the execution of its governmental policies. (p. 296-297)' "

In support of this proposition the *Handbook* cites, *inter alia*, the decisions of this Court in *Heckman* v. *United States*, 224 U.S. 413 (1912) and *United States* v. *Candelaria*, 271 U.S. 432 (1926).

None of the cases cited by petitioners are in point, as none of them involve the relationship and responsibility of the United States to Indian tribes. In the

instant case, by petitioners' own admission, the cases arose from their leasing of lands held by the United States in trust for Indians. It has been uniformly held that in a situation such as this one the United States may sue on behalf of the Indian tribe. The court below was thus clearly correct in holding as it did. Petitioners have cited nothing that would justify upsetting this well-established principle, nor have they asserted any valid ground why this Court should consider reviewing it.

**2. The Court of Appeals correctly held that the tribal tax is valid**

The tax in issue here was a license tax levied on the privilege of doing business on the Pine Ridge Indian Reservation. It is very similar to the tax sustained by this Court in *Morris* v. *Hitchcock*, 194 U.S. 384 (1904). See also *Buster* v. *Wright*, 135 Fed. 947 (8th Cir.), *app. dismissed* 203 U.S. 599 (1906). The very tribal tax here in issue was sustained in *Iron Crow* v. *Oglala Sioux Tribe*, *supra*.

The origin of the tax in issue here was described in *Iron Crow* v. *Ogallala Sioux Tribe*, 129 F. Supp. 15, 24-25 (D.S.D. 1955) in the following terms:

> "Pursuant to the provisions of the Indian Reorganization Act the Ogallala Sioux Tribe adopted on December 14, 1935, a tribal constitution which was approved by the Secretary of the Interior on January 15, 1936. Article IV, Sec. 1(h) of the constitution authorizes the Ogallala Sioux Tribal Council 'to levy taxes upon members of the Ogallala Sioux Tribe and to require the performance of community labor in lieu thereof, and to levy taxes or license fees, subject to review by the Secretary of the Interior, upon non-members

doing business within the reservation.' . . . Because of the need for additional revenue the Tribal Council in April, 1949, passed Resolution No. 34-49, levying an assessment on leases of trust land by non-members. In April 1950 it was amended (No. 147-50) to provide that non-members leasing trust land on the Pine Ridge Reservation were to pay an assessment of 3¢ per acre per annum for grazing land, and 15¢ per acre per annum for farm land. This resolution and the amendment thereto were duly approved by the Indian Bureau Superintendent and submitted to the Secretary of the Interior, who permitted them to go into effect."

Upholding the tax the Court of Appeals observed in that case:

"We conclude from the original precept of tribal sovereignty and the fact that the power of the Oglala Sioux Tribe to impose the tax or license in question has not been pretermitted by any federal statute or agency ruling thereunder, but, to the contrary, has been implemented by the Indian Reorganization Act, supra, that such power still exists." 231 F.2d at 99.

The decision below as well as the decision in the *Iron Crow* case are clearly in keeping with the decision of this Court in *Morris* v. *Hitchcock, supra.* None of the decisions cited by petitioners have even a remote bearing on the issue involved in this case. The arguments relating to "political, social, and economical" changes, on the basis of which prior decisions should be reversed, would be appropriate, if they were justified, only when addressed to the Congress. As this Court observed in *Lone Wolf* v. *Hitchcock*, 187 U.S. 553, 565 (1903):

> "Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the Government."

The contention was made by petitioners in the courts below and is again made in this Court that the tax is unconstitutional. But no argument was advanced at any stage of the proceedings which would distinguish the tax in *Morris* v. *Hitchcock*, *supra*, from the tax involved in this case. In *Morris* v. *Hitchcock*, this Court held that a Chickasaw tax on non-citizens of the Chickasaw Nation holding livestock within Chickasaw territory "was not the exercise of arbitrary power, as claimed, and that neither the act nor the regulations in any respect violate the Constitution of the United States." 194 U.S. at 393.

In the instant case any fact issues as to petitioners' leasing of the land, the acreage leased, and non-payment of the tax were eliminated in the pre-trial stage. By direction of the District Court the essential issue considered at the trial was the constitutionality of the tax. Out of an abundance of caution the District Court, rather than requiring petitioners to prove the tax unconstitutional, placed the burden of proving constitutionality on the respondents. Complying with the instructions of the Court, respondents submitted proof at the trial (1) that petitioners benefited from the law and order services rendered by the Tribe, (2) that the tax on non-members was merely one of a number of sources of Tribal revenue, most of the other sources being direct or indirect contributions by the Tribal membership. As respondents' proof was uncontradicted, the District Court found the tax constitutionally

valid and then directed verdicts for respondents.[3] Its action was, as already indicated, clearly in line with the decision of this Court in *Morris* v. *Hitchcock*.

Thus this aspect of the case, too, was correctly decided and no reason has been shown why review by this Court should be deemed appropriate.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 31, 1958

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[3] In directing the verdicts, the District Court declared, *inter alia:* "The Court can see nothing arbitrary or capricious about the size of this tax . . . The evidence in this case shows that the great portion of this money was used for law and order, maintaining the tribal courts and tribal police and that sort of thing, and whether the defendants feel that they get any direct benefit from that or not, the Court feels that they do, the same as they get benefit from the law and order maintained by the state and Federal government."